



April 24, 2002

Mr. Tom Yantis
Interim City Manager
City of Georgetown
P.O. Box 409
Georgetown, Texas 78627-0409

OR2002-2106

Dear Mr. Yantis:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161727.

The Georgetown Police Department (the "department") received a request for "any and all records" pertaining to a named individual, including information relating to a specified murder case. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

Initially, we address the request for "any and all records" that pertain to the named individual. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses the common-law right to privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). When a law enforcement agency is asked to compile criminal history information regarding a particular individual, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993).

In part, this request is for unspecified law enforcement records that pertain to a named individual. That aspect of this request implicates the individual's right to privacy. Therefore, to the extent that the department maintains any law enforcement records that

depict the named individual as a suspect, arrestee, or defendant, apart from those that relate to the murder case, the department must withhold all such records in their entirety under section 552.101 of the Government Code in conjunction with *Reporters Committee*.

Next, we address the submitted information that pertains to the murder case. You claim that the identities of witnesses in that investigation are protected by common-law privacy under *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied). We note, however, that *Ellen* applies the common-law privacy doctrine to the identities of the victim and witnesses in a sexual harassment investigation. The *Ellen* decision is not applicable to the names of the witnesses in a criminal case. Thus, the names of the witnesses in this murder case are not protected by privacy under *Ellen* and therefore are not excepted from disclosure under section 552.101 of the Government Code.

You also note that the records relating to the murder case contain Texas driver's license information. Section 552.130 of the Government Code excepts from disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). The department must withhold the Texas driver's license information that we have marked under section 552.130.

In summary, the department must withhold any unspecified law enforcement records that depict the named individual as a suspect, arrestee, or defendant under section 552.101 of the Government Code in conjunction with *Reporters Committee*. The department also must withhold the Texas driver's license information under section 552.130. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public

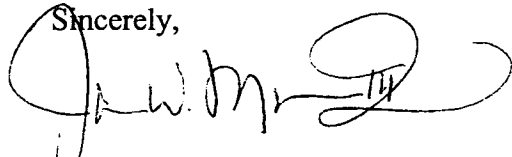
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J.W. Morris III', with a stylized flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 161727

Enc: Marked documents

c: Ms. Danalynn Recer
Louisiana Crisis Assistance Center
412 Main Street
Houston, Texas 77002
(w/o enclosures)